

City Code of Ordinances Sec. 54-141. Termination and revocation of permit; review of decisions.

(a) *Grounds and procedure for revocation.* The manager may, at any time, terminate any permit issued under this article for reasons satisfactory to the manager, provided, however, that the manager shall terminate a permit for First Amendment protected sales only if, where the same reasons exist, the manager also terminates all analogous permits for non-First Amendment protected sales. A permit is analogous if issued under the same section of this article, or in the case of a FLFA permit, if it is an FLV permit. In addition, the manager may revoke any permit issued under this article if:

- (1) The manager finds fraud, misrepresentation, or knowingly false statement with respect to a material fact in the permit application;
- (2) The manager finds that the permittee or the permittee's agent or employee violated this article or the terms of the permit;
- (3) The manager finds that the permittee or the permittee's agent or employee conducted an activity for which the permit is required in such a manner as to create a public nuisance, cause of a breach of the peace, violate any applicable law, or interfere with the rights of abutting property owners;
- (4) In the case of a permit issued under section 54-107, 54-110, or 54-111, the manager finds that the public safety or convenience of pedestrians is not served by the permit;
- (5) In the case of a permit issued under section 54-107 or 54-108, the manager finds that the permit has not been used for 30 consecutive days during April through September or for 210 consecutive days during any time period;
- (6) In the case of a permit issued under section 54-107 or 54-108, the chief of police finds that the permitted location will likely interfere with pedestrian or motor vehicle traffic, create a safety hazard, or conflict with the location of other FLV or FLFA permits; or
- (7) In the case of a permit issued under section 54-107 or 54-108 for a location within a state-maintained street right-of-way, the manager finds that the state or the N.C. Department of Transportation objects that the operation pursuant to the permit is likely to be in violation of G.S. 20-175 or other applicable law.

Except in emergency, before making the decision to terminate or revoke, the manager shall give reasonable notice to the permittee and an opportunity to be heard. A permit may be revoked pursuant to this subsection even if the person making the findings pursuant to this section (the manager or chief of police, as applicable) had made a contrary finding before the permit was issued, regardless of whether the facts upon which the finding is made had changed.

(b) *Notice.* The manager shall cause a written notice of the revocation to be served on the permittee by first-class mail to the address shown on the permit application or by any method allowed by law for service of a summons in a civil action, provided that the person delivering the notice may be any person who is 18 years or older, including the manager. The notice shall set forth a brief statement of the grounds for revocation and of the right to appeal.

(c) *Retention of fees; waiting period.* If the city revokes a permit solely for grounds stated in subsection (a)(6) or (a)(7) of this section, the city shall refund a portion of the fee paid to the extent, if

any, authorized by the action by the city council establishing the fee. If the city revokes a permit not solely for grounds stated in subsection (a)(6) or (a)(7) of this section, the city shall retain the fee paid for the permit. The person whose permit is revoked for grounds stated in subsection (a)(1), (a)(2), or (a)(7) of this section, regardless of whether additional grounds existed, shall not be issued a permit under the same section of this article for the remainder of the time for which the revoked permit had been issued or 30 days after the date of the revocation, whichever time period is longer. The manager shall use reasonable judgment in deciding whether two applicants are the same so that, for example, technical changes in the applicant, or where the applicant one year is the wife and the next year it is the husband, may be disregarded.

(d) *Review of decisions.* If the manager denies the issuance of a permit, revokes a permit, issues a permit with terms deemed unacceptable to the permittee, or makes any other decision pursuant to this article with respect to a permit, the applicant or permittee may have that decision reviewed by filing a written request in the office of the city manager within ten days of the date of the notice of decision. The city manager or a person designated by the city manager for this purpose who is neither the person who made the decision complained of nor that person's subordinate, shall be named as the hearing officer to conduct a hearing in order to review the decision. The manager shall cause a written notice of the time and place of the hearing to be given or sent to the person seeking review. The permittee and the manager may appear in person or through counsel and may present evidence, provided, however, that the hearing officer shall have the authority to conduct the hearing in the manner and for the period of time that he or she deems appropriate to make a decision. The hearing officer may affirm, deny, or modify the decision complained of, and the hearing officer's decision shall be final. Failure to request a review within the time and in the manner provided for in this subsection shall constitute a waiver of the right of review. Except in the case of a First Amendment protected sales permit issued under section 54-108, 54-109, or 54-111, the permit may be used during the review process only if the manager determines that its use would not constitute a substantial threat that the grounds described in subsection (a)(2), (3), (4), (6), or (7) of this section will occur, re-occur, or continue during the review process. In the case of a First Amendment protected sales permit, including a provisional permit, that is issued under section 54-108, 54-109 or 54-111, the permit may be used during the review process.

(Code 1982, § 17-106; Ord. No. 12730, § 1, 12-9-2002)